

**CONTRACT RESULTING FROM INVITATION TO BID NUMBER 10089344-22-L, PUMPING SERVICE – REMOVAL AND DISPOSAL OF WASTEWATER, SAND, AND DEBRIS FROM SAND TRAP HOLDING TANKS**

This Contract (Contract) is entered into by and between the City of San Diego, a municipal corporation (City), and the successful bidder to Invitation to Bid (ITB) # 10089344-22-L, PUMPING SERVICE – REMOVAL AND DISPOSAL OF WASTEWATER, SAND, AND DEBRIS FROM SAND TRAP HOLDING TANKS (Contractor).

**RECITALS**

On or about 10/19/2021, City issued an ITB to prospective bidders on services to be provided to the City. The ITB and any addenda and exhibits thereto are collectively referred to as the “ITB.” The ITB is attached hereto as Exhibit A.

City has determined that Contractor has the expertise, experience, and personnel necessary to provide the services.

City wishes to retain Contractor to provide pumping service to remove and dispose of wastewater, sand, and debris from sand trap holding tanks as further described in the Scope of Work, attached hereto as Exhibit B. (Services).

For good and valuable consideration, the sufficiency of which is acknowledged, City and Contractor agree as follows:

**ARTICLE I  
CONTRACTOR SERVICES**

**1.1 Scope of Work.** Contractor shall provide the Services to City as described in Exhibit B which is incorporated herein by reference. Contractor will submit all required forms and information described in Exhibit A to the Purchasing Agent before providing Service.

**1.2 General Contract Terms and Provisions.** This Contract incorporates by reference the General Contract Terms and Provisions, attached hereto as Exhibit C.

**ARTICLE II  
DURATION OF CONTRACT**

**2.1 Term.** This Contract shall be for a period of five (5) years beginning on the Effective Date. The term of this Contract shall not exceed five years unless approved by the City Council by ordinance.

**2.2 Effective Date.** This Contract shall be effective on the date it is executed by the last Party to sign the Contract, and approved by the City Attorney in accordance with San Diego Charter Section 40.

**ARTICLE III  
COMPENSATION**

**3.1 Amount of Compensation.** City shall pay Contractor for performance of all Services rendered in accordance with this Contract in an amount not to exceed \$1,000,000 over the term of the contract.

**ARTICLE IV  
WAGE REQUIREMENTS**

**4.1** By submitting a response to this ITB, Contractor certifies that he or she is aware of, and agrees to comply with, the wage provisions described in Exhibit D, Wage Requirements, which is incorporated herein by reference, before commencing Services.

**ARTICLE V  
CONTRACT DOCUMENTS**

**5.1 Contract Documents.** The following documents comprise the Contract between the City and Contractor: this Contract and all exhibits thereto; the Notice to Proceed; and the City's written acceptance of exceptions or clarifications to the ITB, if any.

**5.2 Contract Interpretation.** The Contract Documents completely describe the services to be provided. Contractor will provide any services that may reasonably be inferred from the Contract Documents or from prevailing custom or trade usage as being required to produce the intended result whether or not specifically called for or identified in the Contract Documents. Words or phrases which have a well-known technical or construction industry or trade meaning and are used to describe services will be interpreted in accordance with that meaning unless a definition has been provided in the Contract Documents.

**5.3 Precedence.** In resolving conflicts resulting from errors or discrepancies in any of the Contract Documents, the Parties will use the order of precedence as set forth below. The document highest in the order of precedence controls. Inconsistent provisions in the Contract Documents that address the same subject, are consistent, and have different degrees of specificity, are not in conflict and the more specific language will control. The order of precedence from highest to lowest is as follows:

- 1<sup>st</sup>      The Contract
- 2<sup>nd</sup>      The ITB and the City's written acceptance of any exceptions or clarifications to the ITB, if any
- 3<sup>rd</sup>      Contractor's Pricing

**5.4 Counterparts.** This Contract may be executed in counterparts which, when taken together, shall constitute a single signed original as though all Parties had executed the same page.

5.5 **Public Agencies.** Other public agencies, as defined by California Government Code section 6500, may choose to use the terms of this Contract, subject to Contractor's acceptance. The City is not liable or responsible for any obligations related to a subsequent Contract between Contractor and another public agency.

IN WITNESS WHEREOF, this Contract is executed by City and Contractor acting by and through their authorized officers.

CONTRACTOR

CITY OF SAN DIEGO  
A Municipal Corporation

Downstream Services, Inc

Bidder

2855 Progress Place

Street Address

Escondido, CA 92029

City

760-746-2544

Telephone No.

wilmar@downstreamservices.com

E-Mail

BY:



Print Name: Claudia C. Pearson

Director

Purchasing & Contracting Department

March 15, 2022

Date Signed

BY:



Signature of Bidder's Authorized Representative

Wilma Roberts

Print Name

President

Title

11/22/2021

Date

Approved as to form this 24<sup>th</sup> day of

March, 2022.

MARA W. ELLIOTT, City Attorney

BY:



Deputy City Attorney

**EXHIBIT B  
SCOPE OF WORK**

**A. SPECIFICATIONS.** Contractor is required to remove and dispose of wastewater, sand, and debris from sand trap holding tanks at various sites in Shoreline Parks and Mission Bay Parks using either a Vactor truck, Camel truck, or equal. After the Contractor removes the sand and water from the sand trap holding tanks, the Contractor separates the water from the sand by allowing the sand to dry for approximately 7 days. **After the sand dries the Contractor shall dispose of the dry sand at the Miramar landfill.** Contractor may, at no charge, allow the sand and water that was removed from the sand trap holding tanks to dry at the City's Rose Canyon Operations Yard site located at 3775 Morena Boulevard, San Diego, Ca 92117. If using the Rose Canyon Operations Yard, the Contractor is required to pick up the dry sand in about 7 days, and dispose of the dry sand at Miramar Landfill, or another City approved disposal site.

**Service Frequency: Shoreline Parks, 16 total services per year - 1 service per month, October through May; 2 services per month, June through September. Mission Bay Park, 10 total services per year - 1 service per month, excluding February and November. Additional, as needed service may be required depending on conditions. Service will need to be provided between 7:00 AM and 1:30 PM to ensure staff is available to assist if needed.**

Please see Pricing Schedule, section Y, for locations and sand trap sizes.

**B. SITE INSPECTION.** Bidders are strongly encouraged to inspect the sites at which pumping services from sand trap holding tanks are required to verify the requirements. Bidders are responsible for inspecting the various work sites to verify site conditions and size of areas to be serviced. Failure to do so will not relieve the Contractor of their responsibility to perform in accordance with these specifications. No additional compensation or relief from any obligations of the contract will be granted because of lack of knowledge of the sites.

By submitting a bid, bidder acknowledges that they are relying on their own examination of the work site and have the capability to fulfill the contract requirements; and are knowledgeable of all other data and matters requisite to fulfill the contract.

The information provided by the City is not intended to be a substitute for, or a supplement to, the independent verification by the bidder to the extent such independent investigation of site conditions is deemed necessary or desirable by the bidder. Bidder acknowledges that he has not solely relied upon City furnished information regarding site conditions in preparing and submitting a bid.

**C. LICENSES.**

To perform the work described in this solicitation, bidders must:

1. Submit with their bid a copy of the documentation authorizing them to dispose of the water, refuse and debris pumped at an Authorized Disposal Site(s).

2. **RESERVED.**

3. Bidder and sub-contractors are required to have a current registration with the Department of Industrial Relations (DIR) prior to bid closing per Prevailing Wage requirements. Complete table below:

	Registration No.	Expiration Date	Name
DIR Registration No.	1000004632	6/30/2023	Downstream Services, Inc.
Sub-Contractor DIR Registration No.	N/A	N/A	N/A

**D. CONTRACTOR RESPONSIBILITIES.**

1. **Staffing.** The Contractor shall furnish adequate supervisory and working personnel capable of completing all work required under this contract as scheduled and to the satisfaction of the Technical Representative.

2. **Uniforms.** Contractor’s staff shall work in neat and clean uniforms. The Contractor will furnish their employees with a shirt, or some other type of upper body wear, bearing the company’s identification. Appropriate uniform shall be worn at all times, including personnel who are being trained. Failure to do so may result in termination of contract.

3. **Contractor’s Response Time.** A company representative, authorized to discuss matters related to this contract, must be available during normal business hours, between 6:30 a.m. and 5:00 p.m., Monday through Friday. Contractors must be available via cell phone, email, and facsimile. Such services must be active at time of contract award.

3.1 **Emergency Calls.** The Contractor shall have the capability to receive and respond immediately to calls of an emergency nature during normal working hours, as well as outside of normal working hours. A supervisor or manager shall respond to emergency telephone calls within fifteen (15) minutes of the call being placed. All actions required to resolve the emergency shall be completed within two (2) hours. Emergency calls are defined as those where the Technical Representative states an emergency exists and notifies the Contractor’s office of such emergency. Failure to take appropriate corrective action for emergencies within the time frame may result in deductions and/or termination of the contract.

3.1.1 For purposes of this section, “Emergency” means an event that causes the water to overflow onto the surface of the park site, including if the sand traps are full before the scheduled service.

3.2 **Non- Emergency calls.** A supervisor or manager shall respond to non-emergency calls, fax messages, or e-mails within one (1) hour. All actions required to resolve the non-emergency issue(s) or deficiencies must be completed by the next business day unless otherwise directed by the Technical Representative. Failure to respond and/or take appropriate corrective action within the time frame specified may result in deductions and/or termination of contract.

4. **Storm Water Pollution Preventive Regulations.** All Contractors shall comply with San Diego Municipal Code Section 43.0301, Storm Water Management Discharge

Control, and any and all Best Management Practice guidelines and pollution elimination requirements as may be established by the Enforcement Official, in performing or delivering services at City owned, leased, or managed property, or in performance of services and activities on behalf of the City of San Diego regardless of location.

**5. Safety Requirements.** All work performed under this contract will be performed in such a manner as to provide maximum safety to the public and employees, and shall comply with all safety provisions and regulations. The Contractor is responsible for abiding by all CAL/OSHA requirements, including the labeling of containers. Contractors who have ten (10) or more employees shall have an injury/illness program as required by OSHA. The Technical Representative reserves the right to issue restraint or cease and desist orders to the Contractor when unsafe or harmful acts are observed or reported relative to the performance of work under this contract.

Personal Protective Equipment (PPE) shall be supplied by the Contractor for their staff, as required by the Parks and Recreation Department's Stormwater Department and properly used at all times.

**6. Damages.** Contractor's personnel will immediately report any damages, defects, leaks, power outages, or any other problems or irregularities to the Technical Representative. All other non-emergency issues can be reported the following day.

**7. Removal of Employee.** The Technical Representative or designee may require the Contractor to remove from the Contract any of Contractor's employee(s) whose work performance under this contract is careless and incompetent. .

Contractor shall also temporarily remove any of its employees in the event a sexual harassment complaint is filed against that employee. If the sexual harassment allegations are determined to be unfounded following a complete investigation by the Contractor and the City, the Contractor's employee removed may return to work under the Contract. However, if the allegations are determined to be founded, the Contractor's employee will be considered permanently barred from work on any City contract.

**E. DISPOSAL COSTS.** The Contractor shall be responsible for the expense related to the proper and legal disposal of all water, refuse, and debris generated or related to this work. Contractor shall dispose of all water, refuse, and debris at an approved disposal site.

**F. TECHNICAL REPRESENTATIVE.** The Technical Representative for this Contract is identified in the notice of award and is responsible for overseeing and monitoring this Contract. The Technical Representative or designee will provide daily oversight of this Contract to ensure compliance to the scope of work and/or performance to Contract specifications. The Technical Representative or designee is also responsible for oversight of all the invoice payments and billing questions for purchase order issues under this Contract. The Purchasing Agent shall be responsible for all contractual matters and is the only individual authorized to make changes of any kind to the Contract. The Contractor shall not rely upon any oral change from anyone, or a written request for change from someone other than the Purchasing Agent. All changes must be in writing, signed by the Purchasing Agent.

**G. ADDITIONAL INSURANCE.** Contractor shall not begin any performance under the contract until it has provided the City with evidence of the following insurance coverage, in

addition to the coverage required under the City's General Contract Terms and Provisions Applicable to Goods, Services and Consultant Contracts, revised January 16, 2020, Article VII, section 7.2.

**1. Pollution Liability** for a minimum of one million dollars combined single limit (\$1,000,000.00 CSL). Such policy shall show proof of coverage for pollution liability associated with the collection and disposal of hazardous wastes. The City of San Diego must be named as an additional insured on the certificate.

**H. ADDITIONAL INVOICING.** The following invoice requirements are in addition to the City's General Contract Terms and Provisions Applicable to Goods, Services and Consultant Contracts, revised January 16, 2020, Article III, section 3.2, "Invoices.". The City shall pay Contractor for all work performed according to the "Price Per Pump Out" per location rates provided on the Pricing Pages. Travel time to dispose of water, debris, and materials at approved disposal facility shall *not* be included on invoices as these fees are to be incorporated into the rates provided on the Pricing pages.

Invoices shall reference the Purchase Order number, Contractor's name, address and telephone number, technician's name, date and location where work was performed, and breakdown of time spent performing work and the number of gallons of wastewater pumped at each "pump out site" within each location.

Contractor shall include receipts from an approved disposal facility with all invoices as documentation that all water, debris, and materials were disposed of in a lawful manner.

Invoices shall be submitted to the Technical Representative or designee, at the email address specified on the Purchase Order(s).

**I. LICENSES AND PERMITS.** The Contractor is responsible for obtaining all licenses and permits as may be required for the performance of the work required in this Contract.

All of Contractor's vehicle and equipment operators assigned to and working on this Contract shall hold a valid California Driver's License for the type of equipment operated.

**J. COMPLIANCE WITH THE LAW.**

The Contractor shall comply with all applicable Federal, State of California, County and City of San Diego laws and regulations, including but not limited to being PM10 compliant in accordance with EPA Rule 1186.

**K. PARKING.** If at any time Contractor shall be on the premises of the City, then Contractor is responsible for all parking fees, tickets, and permits. The Contractor shall also obey all parking regulations.

**L. SUBCONTRACTORS.** All persons assigned to this Contract by the Contractor, including subcontractors, will be considered as employees of the Contractor and the Contractor shall be held directly responsible for their work. All bidders shall list all work to be subcontracted on paragraph J of the Contractor Standards Pledge of Compliance (use form downloaded from PlanetBids). Failure to provide details of subcontracted work may be cause for rejection of bid or termination of the Contract.

**M. SAFETY REQUIREMENTS.** All work performed under this Contract will be performed in such a manner as to provide maximum safety to the public and employees, and shall

comply with all safety provisions and regulations. The Contractor is responsible for abiding by all CAL/OSHA requirements. The Technical Representative or designee reserves the right to issue restraint or “cease and desist” orders to the Contractor when unsafe or harmful acts are observed or reported relative to the performance of the work under this Contract.

**N. RESPONSIBILITY FOR DAMAGES.** The Contractor shall assume full responsibility for prevention of damage to public, or private property as a result of Contractor’s services or subcontracted services performed pursuant to this Contract. The Contractor will be responsible for payment of all damages caused by its services or subcontracted services rendered pursuant to this Contract. Minor repair costs for damages incurred will be deducted from payments made to Contractor under this Contract, at the time services are performed, unless determined otherwise by the Technical Representative. Extensive damage will be repaired and billed to the Contractor upon completion of repairs.

**O. HAZARDOUS WASTE DISPOSAL PROCEDURE.** Any area where the Contractor is performing work under this Contract, the Contractor and/or Contractor’s subordinate staff, upon finding illegally dumped debris which might reasonably be considered hazardous to the health and/or safety of Contractor’s staff, the public, the landscape environment and/or adjacent properties, shall adhere to the following procedures:

1. Cordon off the area where the material has been found, to the extent possible.
2. Immediately call 911 (Fire Department) and provide all relevant information possible:
  - 2.1 Finder’s name and company
  - 2.2 Specific location of material
  - 2.3 Try to determine:
    - 2.3.1 Number, size, and types of containers
    - 2.3.2 Description of labels
    - 2.3.3 Spillage to soil, pavement, water
    - 2.3.4 Description: solid, liquid, color
    - 2.3.5 Any danger to public
3. Inform the appropriate Supervisor and the City Technical Representative or designee as soon as possible
4. Remain at site until the Fire Department arrives, and
5. Do not move, touch, or sniff any of the material.

**P. PAYMENT WITHHELD.** The City may withhold payment under this Contract, or make deductions, for Contractor’s failure to provide required services under this Contract or for unsatisfactory or substandard work not corrected to the satisfaction of the Technical Representative or designee within the time specified. Such deductions shall not prevent the City from proceeding with termination of the contract in accordance with Exhibit C: General Contract Terms and Conditions.

The City may also withhold payment to such extent as may be necessary to protect the City from loss due to:

1. Claims filed against the City for damage caused by the Contractor's acts or omissions, or reasonable evidence indicating probable filing of claims.

2. The City determines, in its sole discretion, that repairs are required as a result of Contractor's negligence.

**Q. CONTRACT MODIFICATIONS**

At any time during the Term of the Contract, the City reserves the right to increase or decrease the frequency of service, change service locations, and add or delete square footage or acreage to be maintained under the provisions of this Contract.

**R. COOPERATION AND TRANSITION**

Contractor shall cooperate with the City at the expiration or earlier termination of this Contract in order to accomplish a smooth phase-out and transition of responsibility and requirements to any subsequent contractor performing similar services to those described under this Contract, if applicable.

**S. CITY WORK RULES.**

Employees and agents of the Contractor shall, while on the premises of the City, comply with all City rules and regulations. Contractor shall acquaint itself with conditions at the work site so as not to interfere with City operations. Contractor shall not stop, delay, or interfere with City work schedule without the prior approval of the Technical Representative or designee.

**T. CONTRACT COMPLIANCE/QUALITY ASSURANCE MEETINGS.** Contractor shall attend contract compliance/quality assurance meetings as scheduled by the City's Technical Representative, at no additional cost to the City. The purpose of the contract compliance/quality assurance meetings is to address Contract deficiencies, performance issues and problems, and to provide feedback so that the Contractor has an opportunity to address and correct those issues. The City may provide aggressive monitoring of the performance on this Contract, including but not limited to, documentation of the performance issues and problems. If necessary, cure notices may be issued by the City.

**U. NON – INTERFERENCE WITH CITY OPERATIONS.** Employees and agents of Contractor shall, while on the premises of the City, comply with all City rules and regulations. Contractor shall acquaint itself with conditions at the work site so as not to interfere with City operations. Contractor shall not stop, delay, or interfere with City work schedule without the prior approval of the Technical Representative. Contractor shall be entirely responsible for working in harmony with all others on the work site (i.e. City staff and Contractor's staff) when Contractor is working on City premises.

**V. POST AWARD KICK-OFF MEETING.**

1. The Contractor shall be required to attend a post award kick-off meeting within ten (10) calendar days after award of Contract to be scheduled by the Technical Representative or designee.

1.1. The Technical Representative or designee shall communicate the date, time, location, and agenda for this meeting to proposer.

## Bid Results

### Bidder Details

**Vendor Name** Downstream Services, Inc.  
**Address** 2855 Progress Place  
Escondido, California 92029  
United States  
**Respondee** Wilma Roberts  
**Respondee Title** President  
**Phone** 760-746-2544  
**Email** info@downstreamservices.com  
**Vendor Type** CADIR, WOSB, PQUAL  
**License #** 807953  
CADIR

### Bid Detail

**Bid Format** Electronic  
**Submitted** 11/30/2021 1:04 PM (PST)  
**Delivery Method**  
**Bid Responsive** Yes  
**Bid Status** Submitted  
**Confirmation #** 273669

### Respondee Comment

### Buyer Comment

### Attachments

File Title	File Name	File Type
Downstream Services - Price Schedule.pdf	Downstream Services - Price Schedule.pdf	Cost File
Downstream Services - Complete Bid Package.pdf	Downstream Services - Complete Bid Package.pdf	Response File
		General Attachment

## Line Items

Discount Terms No Discount

Item #	Item Code	Type	Item Description	UOM	QTY	Unit Price	Line Total	Response	Comment
See ITB, paragraph X, Pricing Schedule							\$144,036.4800		
1			1 tank, 3' x 3' x 3', at 200 gallons	EA	10	\$235.2000	\$2,352.0000	Yes	
2			1 tank, 3' x 3' x 3', at 200 gallons and 1 tank, 7' x 3' x 4', at 625 - 650 gallons Price per pump out is one-time cost to pump out both tanks.	LS	10	\$235.2000	\$2,352.0000	Yes	
3			1 tank, 3' x 3' x 3', at 200 gallons	EA	10	\$235.2000	\$2,352.0000	Yes	
4			1 tank, 3' x 3' x 3', at 200 gallons	EA	10	\$235.2000	\$2,352.0000	Yes	
5			1 tank, 3' x 3' x 3', at 200 gallons	EA	10	\$235.2000	\$2,352.0000	Yes	
6			1 tank, 3' x 3' x 3', at 200 gallons	EA	10	\$235.2000	\$2,352.0000	Yes	
7			1 tank, 3' x 3' x 3', at 200 gallons	EA	10	\$235.2000	\$2,352.0000	Yes	
8			1 tank, 3' x 3' x 3', at 200 gallons	EA	10	\$235.2000	\$2,352.0000	Yes	
9			1 tank, 3' x 3' x 3', at 200 gallons	EA	10	\$235.2000	\$2,352.0000	Yes	
10			1 tank, 3' x 3' x 3', at 200 gallons	EA	10	\$235.2000	\$2,352.0000	Yes	
11			1 tank, 3' x 3' x 3', at 200 gallons	EA	10	\$235.2000	\$2,352.0000	Yes	
12			1 tank, 3' x 3' x 3', at 200 gallons	EA	10	\$235.2000	\$2,352.0000	Yes	
13			1 tank, 3' x 3' x 3', at 200 gallons	EA	10	\$235.2000	\$2,352.0000	Yes	
14			1 tank, 3' x 3' x 3', at 200 gallons	EA	10	\$235.2000	\$2,352.0000	Yes	
15			1 tank, 3' x 3' x 3', at 200 gallons	EA	10	\$235.2000	\$2,352.0000	Yes	
16			1 tank, 3' x 3' x 3', at 200 gallons	EA	10	\$235.2000	\$2,352.0000	Yes	
17			1 tank, 3' x 3' x 3', at 200 gallons	EA	10	\$235.2000	\$2,352.0000	Yes	
18			1 tank, 3' x 3' x 3', at 200 gallons	EA	10	\$235.2000	\$2,352.0000	Yes	
19			1 tank, 3' x 3' x 3', at 200 gallons	EA	10	\$235.2000	\$2,352.0000	Yes	
20			1 tank, 3' x 3' x 3', at 200 gallons	EA	10	\$235.2000	\$2,352.0000	Yes	
21			1 tank, 3' x 3' x 3', at 200 gallons	EA	10	\$235.2000	\$2,352.0000	Yes	
22			1 tank, 3'x3'x3', at 200 gallons, and 1 tank, 7' x 3' x 4', at 625 - 650 gallons Price per pump out is one-time cost to pump out both tanks.	LS	10	\$235.2000	\$2,352.0000	Yes	
23			1 tank, 3' x 3' x 3', at 200 gallons	EA	10	\$235.2000	\$2,352.0000	Yes	
24			1 tank, 3' x 3' x 3', at 200 gallons	EA	10	\$235.2000	\$2,352.0000	Yes	
25			1 tank, 3' x 3' x 3', at 200 gallons	EA	16	\$391.0200	\$6,256.3200	Yes	
26			1 tank, 3' x 3' x 3', at 200 gallons	EA	16	\$391.0200	\$6,256.3200	Yes	
27			1 tank, at 500 gallons, and 1 tank, at 150 gallons Price per pump out is one-time cost to pump out both tanks.	LS	16	\$391.0200	\$6,256.3200	Yes	
28			1 tank, 24"x 24" x 24", at 60 gallons	EA	16	\$391.0200	\$6,256.3200	Yes	
29			1 tank, 3' x 3' x 3', at 200 gallons	EA	16	\$391.0200	\$6,256.3200	Yes	
30			1 tank, 3' x 3' x 3', at 200 gallons	EA	16	\$391.0200	\$6,256.3200	Yes	
31			1 tank, 3' x 3' x 3', at 200 gallons	EA	16	\$391.0200	\$6,256.3200	Yes	
32			1 tank, 3' x 3' x 3', at 200 gallons	EA	16	\$391.0200	\$6,256.3200	Yes	
33			1 tank, 3' x 3' x 3', at 200 gallons	EA	16	\$391.0200	\$6,256.3200	Yes	
34			1 tank, 5'x 8' x 4', at 1,200 gallons	EA	16	\$391.0200	\$6,256.3200	Yes	
35			1 tank, 3' x 3' x 3', at 200 gallons	EA	16	\$391.0200	\$6,256.3200	Yes	
36			1 tank, 5' x 5' x 5', at 900 gallons	EA	16	\$391.0200	\$6,256.3200	Yes	
37			1 tank, 3' x 3' x 3', at 200 gallons - Pipe Tunnel	EA	16	\$391.0200	\$6,256.3200	Yes	
38			1 tank, 3' x 3' x 3', at 200 gallons - Showers	EA	16	\$391.0200	\$6,256.3200	Yes	

## Line Item Subtotals

Section Title	Line Total
See ITB, paragraph X, Pricing Schedule	<b>\$144,036.4800</b>
<b>Grand Total</b>	<b>\$144,036.4800</b>

**W. PRICING.** It is the City’s intent to award this contract to a single bidder.

“Price per Pump Out” shall be inclusive of all costs required to perform and complete the services as specified in this contract, to include but not be limited to labor, disposal costs/fees, permitting and licensing, equipment, travel, transportation, overhead, and administrative costs, etc.. The City will not be liable for any additional fees or taxes.

Bidder's pricing shall be submitted as a flat rate for performance of all specifications in this ITB. The City shall evaluate pricing for this ITB solely based upon bidder's submitted flat rate, as specified in the below table. Bidders must submit their bid for pricing on the following Price Schedule. The Price Schedule shall be completed in full and shall be incorporated herein by reference. Any deviations from the Price Schedule may be considered non-responsive and unacceptable.

**X. PRICING SCHEDULE. Shoreline Parks and Mission Bay Park Sand Trap Holding Locations**

\* “Estimated Annual Price” = “Estimated Annual Frequency” X “Price Per Pump Out”

Item No.	Estimated Annual Frequency	U/M	Location	Description	Price Per Pump Out	Estimated Annual Price*
1.	10	EA	Mission Bay Park: Sunset Point Comfort Station #1405 1656 West Mission Bay	1 tank, 3' x 3' x 3', at 200 gallons	\$	\$
2.	10	LS	Mission Bay Park: Fanuel Street Comfort Station #9950 4024 Fanuel Street	1 tank, 3' x 3' x 3', at 200 gallons and 1 tank, 7' x 3' x 4', at 625 - 650 gallons  Price per pump out is one-time cost to pump out <b>both</b> tanks.	\$	\$
3.	10	EA	Mission Bay Park: West Bonita Comfort Station #521 899 West Mission Bay Drive	1 tank, 3' x 3' x 3', at 200 gallons	\$	\$
4.	10	EA	Mission Bay Park: East Bonita Comfort Station #1056 899 West Mission Bay Drive	1 tank, 3' x 3' x 3', at 200 gallons	\$	\$

Item No.	Estimated Annual Frequency	U/M	Location	Description	Price Per Pump Out	Estimated Annual Price*
5.	10	EA	Mission Bay Park: Mission Point Comfort Station #1076 2600 Mission Boulevard	1 tank, 3' x 3' x 3', at 200 gallons	\$	\$
6.	10	EA	Mission Bay Park: South De Anza Comfort Station #838 2699 East Mission Bay Drive	1 tank, 3' x 3' x 3', at 200 gallons	\$	\$
7.	10	EA	Mission Bay Park: Playa Pacifica Comfort Station #1091 2590 East Mission Bay Drive	1 tank, 3' x 3' x 3', at 200 gallons	\$	\$
8.	10	EA	Mission Bay Park: Playa Pacifica Comfort Station #1092 2270 East Mission Bay Drive	1 tank, 3' x 3' x 3', at 200 gallons	\$	\$
9.	10	EA	Mission Bay Park: 1400 Fiesta Island Road	1 tank, 3' x 3' x 3', at 200 gallons	\$	\$
10.	10	EA	Mission Bay Park: Vacation Isle West Comfort Station #1206 1400 Vacation Road	1 tank, 3' x 3' x 3', at 200 gallons	\$	\$
11.	10	EA	Mission Bay Park: Vacation Isle North Comfort Station #1087 3100 Ingraham Street	1 tank, 3' x 3' x 3', at 200 gallons	\$	\$
12.	10	EA	Mission Bay Park: North Ski Beach Comfort Station #335 3300 Ingraham Street	1 tank, 3' x 3' x 3', at 200 gallons	\$	\$

Item No.	Estimated Annual Frequency	U/M	Location	Description	Price Per Pump Out	Estimated Annual Price*
13.	10	EA	Mission Bay Park: Middle Ski Beach Comfort Station #10085 2900 Ingraham St	1 tank, 3' x 3' x 3', at 200 gallons	\$	\$
14.	10	EA	Mission Bay Park: South Ski Beach Comfort Station #523 2800 Ingraham Street	1 tank, 3' x 3' x 3', at 200 gallons	\$	\$
15.	10	EA	Mission Bay Park: Bahia Point Comfort Station #834 3200 Gleason Road	1 tank, 3' x 3' x 3', at 200 gallons	\$	\$
16.	10	EA	Mission Bay Park: North De Anza #10087 2800 North Mission Bay Drive	1 tank, 3' x 3' x 3', at 200 gallons	\$	\$
17.	10	EA	Mission Bay Park: Playa Pacifica Comfort Station #1093 1920 East Mission Bay Drive	1 tank, 3' x 3' x 3', at 200 gallons	\$	\$
18.	10	EA	Mission Bay Park: North Tecolote Comfort Station #1094 1740 East Mission Bay Drive	1 tank, 3' x 3' x 3', at 200 gallons	\$	\$
19.	10	EA	Mission Bay Park: South Tecolote Comfort Station #1406 1509 East Mission Bay Drive	1 tank, 3' x 3' x 3', at 200 gallons	\$	\$

Item No.	Estimated Annual Frequency	U/M	Location	Description	Price Per Pump Out	Estimated Annual Price*
20.	10	EA	Mission Bay Park: North Crown Point Comfort Station #522 3700 Corona Oriente Road	1 tank, 3' x 3' x 3', at 200 gallons	\$	\$
21.	10	EA	Mission Bay Park: South Crown Point Comfort Station #576 3600 Corona Oriente Road	1 tank, 3' x 3' x 3', at 200 gallons	\$	\$
22.	10	LS	Mission Bay Park: South Shores #9843 404 Sea World Drive	1 tank, 3'x3'x3', at 200 gallons, and 1 tank, 7' x 3' x 4', at 625 - 650 gallons  Price per pump out is one-time cost to pump out <b>both</b> tanks.	\$	\$
23.	10	EA	Mission Bay Park: Santa Clara Comfort Station #9939 900 Santa Clara Point	1 tank, 3' x 3' x 3', at 200 gallons	\$	\$
24.	10	EA	Mission Bay Park: Ventura Cove 1200 West Mission Bay	1 tank, 3' x 3' x 3', at 200 gallons	\$	\$
25.	16	EA	<b>Shoreline Parks:</b> Kellogg Park North Comfort Station 8400 El Paseo Grande/ 8400 Camino del Oro	1 tank, 3' x 3' x 3', at 200 gallons	\$	\$

Item No.	Estimated Annual Frequency	U/M	Location	Description	Price Per Pump Out	Estimated Annual Price*
26.	16	EA	<b>Shoreline Parks:</b> Kellogg Park South Comfort Station 2120 Vallecitos/ 8200 Camino del Oro	1 tank, 3' x 3' x 3', at 200 gallons	\$	\$
27.	16	LS	<b>Shoreline Parks:</b> Ellen Browning Scripps Park/La Jolla Cove Comfort Station 1155 Coast Boulevard	1 tank, at 500 gallons, and 1 tank, at 150 gallons  Price per pump out is one-time cost to pump out <b>both</b> tanks.	\$	\$
28.	16	EA	<b>Shoreline Parks:</b> Children's Pool Comfort Station 830 Coast Boulevard	1 tank, 24" x 24" x 24", at 60 gallons	\$	\$
29.	16	EA	<b>Shoreline Parks:</b> Tourmaline Surfing Park Comfort Station 601 Tourmaline Street	1 tank, 3' x 3' x 3', at 200 gallons	\$	\$
30.	16	EA	<b>Shoreline Parks:</b> Pacific Beach Park (Hornblend St.) Comfort Station 700 Hornblend Street	1 tank, 3' x 3' x 3', at 200 gallons	\$	\$
31.	16	EA	<b>Shoreline Parks:</b> Pacific Beach Park (Grande Ave.) Comfort Station 700 Grand Avenue	1 tank, 3' x 3' x 3', at 200 gallons	\$	\$
32.	16	EA	<b>Shoreline Parks:</b> Pacific Beach Drive Comfort Station 700 Pacific Beach Drive	1 tank, 3' x 3' x 3', at 200 gallons	\$	\$

Item No.	Estimated Annual Frequency	U/M	Location	Description	Price Per Pump Out	Estimated Annual Price*
33.	16	EA	<b>Shoreline Parks:</b> Mission Beach Park (Ventura) Comfort Station 3141 Ocean Front Walk/Ventura Place	1 tank, 3' x 3' x 3', at 200 gallons	\$	\$
34.	16	EA	<b>Shoreline Parks:</b> Mission Beach Park (Belmont) Comfort Station #14,67 3100 Mission Boulevard	1 tank, 5' x 8' x 4', at 1,200 gallons	\$	\$
35.	16	EA	<b>Shoreline Parks:</b> South Mission Beach Comfort Station 2597 Mission Boulevard at N. Jetty Rd.	1 tank, 3' x 3' x 3', at 200 gallons	\$	\$
36.	16	EA	<b>Shoreline Parks:</b> Ocean Beach Park Brighton Comfort Station 5181 Brighton Avenue at Spray Street	1 tank, 5' x 5' x 5', at 900 gallons	\$	\$
37.	16	EA	<b>Shoreline Parks:</b> Ocean Beach Park Santa Monica Comfort Station 1950 Abbott Street	1 tank, 3' x 3' x 3', at 200 gallons - Pipe Tunnel	\$	\$
38.	16	EA	<b>Shoreline Parks:</b> Ocean Beach Park Santa Monica Comfort Station 1900 Abbott Street	1 tank, 3' x 3' x 3', at 200 gallons - Showers	\$	\$
<b>TOTAL:</b>						\$

# EXHIBIT C



**THE CITY OF SAN DIEGO**  
**GENERAL CONTRACT TERMS AND PROVISIONS**  
**APPLICABLE TO GOODS, SERVICES, AND CONSULTANT CONTRACTS**

**ARTICLE I  
SCOPE AND TERM OF CONTRACT**

**1.1 Scope of Contract.** The scope of contract between the City and a provider of goods and/or services (Contractor) is described in the Contract Documents. The Contract Documents are comprised of the Request for Proposal, Invitation to Bid, or other solicitation document (Solicitation); the successful bid or proposal; the letter awarding the contract to Contractor; the City's written acceptance of exceptions or clarifications to the Solicitation, if any; and these General Contract Terms and Provisions.

**1.2 Effective Date.** A contract between the City and Contractor (Contract) is effective on the last date that the contract is signed by the parties and approved by the City Attorney in accordance with Charter section 40. Unless otherwise terminated, this Contract is effective until it is completed or as otherwise agreed upon in writing by the parties, whichever is the earliest. A Contract term cannot exceed five (5) years unless approved by the City Council by ordinance.

**1.3 Contract Extension.** The City may, in its sole discretion, unilaterally exercise an option to extend the Contract as described in the Contract Documents. In addition, the City may, in its sole discretion, unilaterally extend the Contract on a month-to-month basis following contract expiration if authorized under Charter section 99 and the Contract Documents. Contractor shall not increase its pricing in excess of the percentage increase described in the Contract.

**ARTICLE II  
CONTRACT ADMINISTRATOR**

**2.1 Contract Administrator.** The Purchasing Agent or designee is the Contract Administrator for purposes of this Contract, and has the responsibilities described in this Contract, in the San Diego Charter, and in Chapter 2, Article 2, Divisions 5, 30, and 32.

**2.1.1 Contractor Performance Evaluations.** The Contract Administrator will evaluate Contractor's performance as often as the Contract Administrator deems necessary throughout the term of the contract. This evaluation will be based on criteria including the quality of goods or services, the timeliness of performance, and adherence to applicable laws, including prevailing wage and living wage. City will provide Contractors who receive an unsatisfactory rating with a copy of the evaluation and an opportunity to respond. City may consider final evaluations, including Contractor's response, in evaluating future proposals and bids for contract award.

**2.2 Notices.** Unless otherwise specified, in all cases where written notice is required under this Contract, service shall be deemed sufficient if the notice is personally delivered or deposited in the United States mail, with first class postage paid, attention to the Purchasing Agent. Proper notice is effective on the date of personal delivery or five (5) days after deposit in a United States postal mailbox unless provided otherwise in the Contract. Notices to the City shall be sent to:

Purchasing Agent  
City of San Diego, Purchasing and Contracting Division  
1200 3rd Avenue, Suite 200  
San Diego, CA 92101-4195

### ARTICLE III COMPENSATION

**3.1 Manner of Payment.** Contractor will be paid monthly, in arrears, for goods and/or services provided in accordance with the terms and provisions specified in the Contract.

**3.2 Invoices.**

**3.2.1 Invoice Detail.** Contractor's invoice must be on Contractor's stationary with Contractor's name, address, and remittance address if different. Contractor's invoice must have a date, an invoice number, a purchase order number, a description of the goods or services provided, and an amount due.

**3.2.2 Service Contracts.** Contractor must submit invoices for services to City by the 10<sup>th</sup> of the month following the month in which Contractor provided services. Invoices must include the address of the location where services were performed and the dates in which services were provided.

**3.2.3 Goods Contracts.** Contractor must submit invoices for goods to City within seven days of the shipment. Invoices must describe the goods provided.

**3.2.4 Parts Contracts.** Contractor must submit invoices for parts to City within seven calendar (7) days of the date the parts are shipped. Invoices must include the manufacturer of the part, manufacturer's published list price, percentage discount applied in accordance with Pricing Page(s), the net price to City, and an item description, quantity, and extension.

**3.2.5 Extraordinary Work.** City will not pay Contractor for extraordinary work unless Contractor receives prior written authorization from the Contract Administrator. Failure to do so will result in payment being withheld for services. If approved, Contractor will include an invoice that describes the work performed and the location where the work was performed, and a copy of the Contract Administrator's written authorization.

**3.2.6 Reporting Requirements.** Contractor must submit the following reports using the City's web-based contract compliance portal. Incomplete and/or delinquent reports may cause payment delays, non-payment of invoice, or both. For questions, please view the City's online tutorials on how to utilize the City's web-based contract compliance portal.

**3.2.6.1 Monthly Employment Utilization Reports.** Contractor and Contractor's subcontractors and suppliers must submit Monthly Employment Utilization Reports by the fifth (5<sup>th</sup>) day of the subsequent month.

**3.2.6.2 Monthly Invoicing and Payments.** Contractor and Contractor's subcontractors and suppliers must submit Monthly Invoicing and Payment Reports by the fifth (5<sup>th</sup>) day of the subsequent month.

**3.3 Annual Appropriation of Funds.** Contractor acknowledges that the Contract term may extend over multiple City fiscal years, and that work and compensation under this Contract is contingent on the City Council appropriating funding for and authorizing such work and compensation for those fiscal years. This Contract may be terminated at the end of the fiscal year for which sufficient funding is not appropriated and authorized. City is not obligated to pay Contractor for any amounts not duly appropriated and authorized by City Council.

**3.4 Price Adjustments.** Based on Contractor's written request and justification, the City may approve an increase in unit prices on Contractor's pricing pages consistent with the amount requested in the justification in an amount not to exceed the increase in the Consumer Price Index, San Diego Area, for All Urban Customers (CPI-U) as published by the Bureau of Labor Statistics, or 5.0%, whichever is less, during the preceding one year term. If the CPI-U is a negative number, then the unit prices shall not be adjusted for that option year (the unit prices will not be decreased). A negative CPI-U shall be counted against any subsequent increases in the CPI-U when calculating the unit prices for later option years. Contractor must provide such written request and justification no less than sixty days before the date in which City may exercise the option to renew the contract, or sixty days before the anniversary date of the Contract. Justification in support of the written request must include a description of the basis for the adjustment, the proposed effective date and reasons for said date, and the amount of the adjustment requested with documentation to support the requested change (e.g. CPI-U or 5.0%, whichever is less). City's approval of this request must be in writing.

## **ARTICLE IV SUSPENSION AND TERMINATION**

**4.1 City's Right to Suspend for Convenience.** City may suspend all or any portion of Contractor's performance under this Contract at its sole option and for its convenience for a reasonable period of time not to exceed six (6) months. City must first give ten (10) days' written notice to Contractor of such suspension. City will pay to Contractor a sum equivalent to the reasonable value of the goods and/or services satisfactorily provided up to the date of suspension. City may rescind the suspension prior to or at six (6) months by providing Contractor with written notice of the rescission, at which time Contractor would be required to resume performance in compliance with the terms and provisions of this Contract. Contractor will be entitled to an extension of time to complete performance under the Contract equal to the length of the suspension unless otherwise agreed to in writing by the Parties.

**4.2 City's Right to Terminate for Convenience.** City may, at its sole option and for its convenience, terminate all or any portion of this Contract by giving thirty (30) days' written notice of such termination to Contractor. The termination of the Contract shall be effective upon receipt of the notice by Contractor. After termination of all or any portion of the Contract, Contractor shall: (1) immediately discontinue all affected performance (unless the notice directs otherwise); and (2) complete any and all additional work necessary for the orderly filing of

documents and closing of Contractor's affected performance under the Contract. After filing of documents and completion of performance, Contractor shall deliver to City all data, drawings, specifications, reports, estimates, summaries, and such other information and materials created or received by Contractor in performing this Contract, whether completed or in process. By accepting payment for completion, filing, and delivering documents as called for in this section, Contractor discharges City of all of City's payment obligations and liabilities under this Contract with regard to the affected performance.

**4.3 City's Right to Terminate for Default.** Contractor's failure to satisfactorily perform any obligation required by this Contract constitutes a default. Examples of default include a determination by City that Contractor has: (1) failed to deliver goods and/or perform the services of the required quality or within the time specified; (2) failed to perform any of the obligations of this Contract; and (3) failed to make sufficient progress in performance which may jeopardize full performance.

**4.3.1** If Contractor fails to satisfactorily cure a default within ten (10) calendar days of receiving written notice from City specifying the nature of the default, City may immediately cancel and/or terminate this Contract, and terminate each and every right of Contractor, and any person claiming any rights by or through Contractor under this Contract.

**4.3.2** If City terminates this Contract, in whole or in part, City may procure, upon such terms and in such manner as the Purchasing Agent may deem appropriate, equivalent goods or services and Contractor shall be liable to City for any excess costs. Contractor shall also continue performance to the extent not terminated.

**4.4 Termination for Bankruptcy or Assignment for the Benefit of Creditors.** If Contractor files a voluntary petition in bankruptcy, is adjudicated bankrupt, or makes a general assignment for the benefit of creditors, the City may at its option and without further notice to, or demand upon Contractor, terminate this Contract, and terminate each and every right of Contractor, and any person claiming rights by and through Contractor under this Contract.

**4.5 Contractor's Right to Payment Following Contract Termination.**

**4.5.1 Termination for Convenience.** If the termination is for the convenience of City an equitable adjustment in the Contract price shall be made. No amount shall be allowed for anticipated profit on unperformed services, and no amount shall be paid for an as needed contract beyond the Contract termination date.

**4.5.2 Termination for Default.** If, after City gives notice of termination for failure to fulfill Contract obligations to Contractor, it is determined that Contractor had not so failed, the termination shall be deemed to have been effected for the convenience of City. In such event, adjustment in the Contract price shall be made as provided in Section 4.3.2. City's rights and remedies are in addition to any other rights and remedies provided by law or under this Contract.

**4.6 Remedies Cumulative.** City's remedies are cumulative and are not intended to be exclusive of any other remedies or means of redress to which City may be lawfully entitled in case of any breach or threatened breach of any provision of this Contract.

## **ARTICLE V ADDITIONAL CONTRACTOR OBLIGATIONS**

**5.1 Inspection and Acceptance.** The City will inspect and accept goods provided under this Contract at the shipment destination unless specified otherwise. Inspection will be made and acceptance will be determined by the City department shown in the shipping address of the Purchase Order or other duly authorized representative of City.

**5.2 Responsibility for Lost or Damaged Shipments.** Contractor bears the risk of loss or damage to goods prior to the time of their receipt and acceptance by City. City has no obligation to accept damaged shipments and reserves the right to return damaged goods, at Contractor's sole expense, even if the damage was not apparent or discovered until after receipt.

**5.3 Responsibility for Damages.** Contractor is responsible for all damage that occurs as a result of Contractor's fault or negligence or that of its' employees, agents, or representatives in connection with the performance of this Contract. Contractor shall immediately report any such damage to people and/or property to the Contract Administrator.

**5.4 Delivery.** Delivery shall be made on the delivery day specified in the Contract Documents. The City, in its sole discretion, may extend the time for delivery. The City may order, in writing, the suspension, delay or interruption of delivery of goods and/or services.

**5.5 Delay.** Unless otherwise specified herein, time is of the essence for each and every provision of the Contract. Contractor must immediately notify City in writing if there is, or it is anticipated that there will be, a delay in performance. The written notice must explain the cause for the delay and provide a reasonable estimate of the length of the delay. City may terminate this Contract as provided herein if City, in its sole discretion, determines the delay is material.

**5.5.1** If a delay in performance is caused by any unforeseen event(s) beyond the control of the parties, City may allow Contractor to a reasonable extension of time to complete performance, but Contractor will not be entitled to damages or additional compensation. Any such extension of time must be approved in writing by City. The following conditions may constitute such a delay: war; changes in law or government regulation; labor disputes; strikes; fires, floods, adverse weather or other similar condition of the elements necessitating cessation of the performance; inability to obtain materials, equipment or labor; or other specific reasons agreed to between City and Contractor. This provision does not apply to a delay caused by Contractor's acts or omissions. Contractor is not entitled to an extension of time to perform if a delay is caused by Contractor's inability to obtain materials, equipment, or labor unless City has received, in a timely manner, documentary proof satisfactory to City of Contractor's inability to obtain materials, equipment, or labor, in which case City's approval must be in writing.

**5.6 Restrictions and Regulations Requiring Contract Modification.** Contractor shall immediately notify City in writing of any regulations or restrictions that may or will require Contractor to alter the material, quality, workmanship, or performance of the goods and/or services to be provided. City reserves the right to accept any such alteration, including any resulting reasonable price adjustments, or to cancel the Contract at no expense to the City.

**5.7 Warranties.** All goods and/or services provided under the Contract must be warranted by Contractor or manufacturer for at least twelve (12) months after acceptance by City, except automotive equipment. Automotive equipment must be warranted for a minimum of 12,000 miles or 12 months, whichever occurs first, unless otherwise stated in the Contract. Contractor is responsible to City for all warranty service, parts, and labor. Contractor is required to ensure that warranty work is performed at a facility acceptable to City and that services, parts, and labor are available and provided to meet City's schedules and deadlines. Contractor may establish a warranty service contract with an agency satisfactory to City instead of performing the warranty service itself. If Contractor is not an authorized service center and causes any damage to equipment being serviced, which results in the existing warranty being voided, Contractor will be liable for all costs of repairs to the equipment, or the costs of replacing the equipment with new equipment that meets City's operational needs.

**5.8 Industry Standards.** Contractor shall provide goods and/or services acceptable to City in strict conformance with the Contract. Contractor shall also provide goods and/or services in accordance with the standards customarily adhered to by an experienced and competent provider of the goods and/or services called for under this Contract using the degree of care and skill ordinarily exercised by reputable providers of such goods and/or services. Where approval by City, the Mayor, or other representative of City is required, it is understood to be general approval only and does not relieve Contractor of responsibility for complying with all applicable laws, codes, policies, regulations, and good business practices.

**5.9 Records Retention and Examination.** Contractor shall retain, protect, and maintain in an accessible location all records and documents, including paper, electronic, and computer records, relating to this Contract for five (5) years after receipt of final payment by City under this Contract. Contractor shall make all such records and documents available for inspection, copying, or other reproduction, and auditing by authorized representatives of City, including the Purchasing Agent or designee. Contractor shall make available all requested data and records at reasonable locations within City or County of San Diego at any time during normal business hours, and as often as City deems necessary. If records are not made available within the City or County of San Diego, Contractor shall pay City's travel costs to the location where the records are maintained and shall pay for all related travel expenses. Failure to make requested records available for inspection, copying, or other reproduction, or auditing by the date requested may result in termination of the Contract. Contractor must include this provision in all subcontracts made in connection with this Contract.

**5.9.1** Contractor shall maintain records of all subcontracts entered into with all firms, all project invoices received from Subcontractors and Suppliers, all purchases of materials and services from Suppliers, and all joint venture participation. Records shall show name, telephone number including area code, and business address of each Subcontractor and Supplier, and joint venture partner, and the total amount actually paid to each firm. Project relevant records, regardless of tier, may be periodically reviewed by the City.

**5.10 Quality Assurance Meetings.** Upon City's request, Contractor shall schedule one or more quality assurance meetings with City's Contract Administrator to discuss Contractor's performance. If requested, Contractor shall schedule the first quality assurance meeting no later than eight (8) weeks from the date of commencement of work under the Contract. At the quality assurance meeting(s), City's Contract Administrator will provide Contractor with feedback, will note any deficiencies in Contract performance, and provide Contractor with an opportunity to address and correct such deficiencies. The total number of quality assurance meetings that may be required by City will depend upon Contractor's performance.

**5.11 Duty to Cooperate with Auditor.** The City Auditor may, in his sole discretion, at no cost to the City, and for purposes of performing his responsibilities under Charter section 39.2, review Contractor's records to confirm contract compliance. Contractor shall make reasonable efforts to cooperate with Auditor's requests.

**5.12 Safety Data Sheets.** If specified by City in the solicitation or otherwise required by this Contract, Contractor must send with each shipment one (1) copy of the Safety Data Sheet (SDS) for each item shipped. Failure to comply with this procedure will be cause for immediate termination of the Contract for violation of safety procedures.

**5.13 Project Personnel.** Except as formally approved by the City, the key personnel identified in Contractor's bid or proposal shall be the individuals who will actually complete the work. Changes in staffing must be reported in writing and approved by the City.

**5.13.1 Criminal Background Certification.** Contractor certifies that all employees working on this Contract have had a criminal background check and that said employees are clear of any sexual and drug related convictions. Contractor further certifies that all employees hired by Contractor or a subcontractor shall be free from any felony convictions.

**5.13.2 Photo Identification Badge.** Contractor shall provide a company photo identification badge to any individual assigned by Contractor or subcontractor to perform services or deliver goods on City premises. Such badge must be worn at all times while on City premises. City reserves the right to require Contractor to pay fingerprinting fees for personnel assigned to work in sensitive areas. All employees shall turn in their photo identification badges to Contractor upon completion of services and prior to final payment of invoice.

**5.14 Standards of Conduct.** Contractor is responsible for maintaining standards of employee competence, conduct, courtesy, appearance, honesty, and integrity satisfactory to the City.

**5.14.1 Supervision.** Contractor shall provide adequate and competent supervision at all times during the Contract term. Contractor shall be readily available to meet with the City. Contractor shall provide the telephone numbers where its representative(s) can be reached.

**5.14.2 City Premises.** Contractor's employees and agents shall comply with all City rules and regulations while on City premises.

**5.14.3 Removal of Employees.** City may request Contractor immediately remove from assignment to the City any employee found unfit to perform duties at the City. Contractor shall comply with all such requests.

**5.15 Licenses and Permits.** Contractor shall, without additional expense to the City, be responsible for obtaining any necessary licenses, permits, certifications, accreditations, fees and approvals for complying with any federal, state, county, municipal, and other laws, codes, and regulations applicable to Contract performance. This includes, but is not limited to, any laws or regulations requiring the use of licensed contractors to perform parts of the work.

**5.16 Contractor and Subcontractor Registration Requirements.** Prior to the award of the Contract or Task Order, Contractor and Contractor's subcontractors and suppliers must register with the City's web-based vendor registration and bid management system. The City may not award the Contract until registration of all subcontractors and suppliers is complete. In the event this requirement is not met within the time frame specified by the City, the City reserves the right to rescind the Contract award and to make the award to the next responsive and responsible proposer of bidder.

## **ARTICLE VI INTELLECTUAL PROPERTY RIGHTS**

**6.1 Rights in Data.** If, in connection with the services performed under this Contract, Contractor or its employees, agents, or subcontractors, create artwork, audio recordings, blueprints, designs, diagrams, documentation, photographs, plans, reports, software, source code, specifications, surveys, system designs, video recordings, or any other original works of authorship, whether written or readable by machine (Deliverable Materials), all rights of Contractor or its subcontractors in the Deliverable Materials, including, but not limited to publication, and registration of copyrights, and trademarks in the Deliverable Materials, are the sole property of City. Contractor, including its employees, agents, and subcontractors, may not use any Deliverable Material for purposes unrelated to Contractor's work on behalf of the City without prior written consent of City. Contractor may not publish or reproduce any Deliverable Materials, for purposes unrelated to Contractor's work on behalf of the City, without the prior written consent of the City.

**6.2 Intellectual Property Rights Assignment.** For no additional compensation, Contractor hereby assigns to City all of Contractor's rights, title, and interest in and to the content of the Deliverable Materials created by Contractor or its employees, agents, or subcontractors, including copyrights, in connection with the services performed under this Contract. Contractor

shall promptly execute and deliver, and shall cause its employees, agents, and subcontractors to promptly execute and deliver, upon request by the City or any of its successors or assigns at any time and without further compensation of any kind, any power of attorney, assignment, application for copyright, patent, trademark or other intellectual property right protection, or other papers or instruments which may be necessary or desirable to fully secure, perfect or otherwise protect to or for the City, its successors and assigns, all right, title and interest in and to the content of the Deliverable Materials. Contractor also shall cooperate and assist in the prosecution of any action or opposition proceeding involving such intellectual property rights and any adjudication of those rights.

**6.3 Contractor Works.** Contractor Works means tangible and intangible information and material that: (a) had already been conceived, invented, created, developed or acquired by Contractor prior to the effective date of this Contract; or (b) were conceived, invented, created, or developed by Contractor after the effective date of this Contract, but only to the extent such information and material do not constitute part or all of the Deliverable Materials called for in this Contract. All Contractor Works, and all modifications or derivatives of such Contractor Works, including all intellectual property rights in or pertaining to the same, shall be owned solely and exclusively by Contractor.

**6.4 Subcontracting.** In the event that Contractor utilizes a subcontractor(s) for any portion of the work that comprises the whole or part of the specified Deliverable Materials to the City, the agreement between Contractor and the subcontractor shall include a statement that identifies the Deliverable Materials as a “works for hire” as described in the United States Copyright Act of 1976, as amended, and that all intellectual property rights in the Deliverable Materials, whether arising in copyright, trademark, service mark or other forms of intellectual property rights, belong to and shall vest solely with the City. Further, the agreement between Contractor and its subcontractor shall require that the subcontractor, if necessary, shall grant, transfer, sell and assign, free of charge, exclusively to City, all titles, rights and interests in and to the Deliverable Materials, including all copyrights, trademarks and other intellectual property rights. City shall have the right to review any such agreement for compliance with this provision.

**6.5 Intellectual Property Warranty and Indemnification.** Contractor represents and warrants that any materials or deliverables, including all Deliverable Materials, provided under this Contract are either original, or not encumbered, and do not infringe upon the copyright, trademark, patent or other intellectual property rights of any third party, or are in the public domain. If Deliverable Materials provided hereunder become the subject of a claim, suit or allegation of copyright, trademark or patent infringement, City shall have the right, in its sole discretion, to require Contractor to produce, at Contractor’s own expense, new non-infringing materials, deliverables or works as a means of remedying any claim of infringement in addition to any other remedy available to the City under law or equity. Contractor further agrees to indemnify, defend, and hold harmless the City, its officers, employees and agents from and against any and all claims, actions, costs, judgments or damages, of any type, alleging or threatening that any Deliverable Materials, supplies, equipment, services or works provided under this contract infringe the copyright, trademark, patent or other intellectual property or proprietary rights of any third party (Third Party Claim of Infringement). If a Third Party Claim

of Infringement is threatened or made before Contractor receives payment under this Contract, City shall be entitled, upon written notice to Contractor, to withhold some or all of such payment.

**6.6 Software Licensing.** Contractor represents and warrants that the software, if any, as delivered to City, does not contain any program code, virus, worm, trap door, back door, time or clock that would erase data or programming or otherwise cause the software to become inoperable, inaccessible, or incapable of being used in accordance with its user manuals, either automatically, upon the occurrence of licensor-selected conditions or manually on command. Contractor further represents and warrants that all third party software, delivered to City or used by Contractor in the performance of the Contract, is fully licensed by the appropriate licensor.

**6.7 Publication.** Contractor may not publish or reproduce any Deliverable Materials, for purposes unrelated to Contractor's work on behalf of the City without prior written consent from the City.

**6.8 Royalties, Licenses, and Patents.** Unless otherwise specified, Contractor shall pay all royalties, license, and patent fees associated with the goods that are the subject of this solicitation. Contractor warrants that the goods, materials, supplies, and equipment to be supplied do not infringe upon any patent, trademark, or copyright, and further agrees to defend any and all suits, actions and claims for infringement that are brought against the City, and to defend, indemnify and hold harmless the City, its elected officials, officers, and employees from all liability, loss and damages, whether general, exemplary or punitive, suffered as a result of any actual or claimed infringement asserted against the City, Contractor, or those furnishing goods, materials, supplies, or equipment to Contractor under the Contract.

## **ARTICLE VII INDEMNIFICATION AND INSURANCE**

**7.1 Indemnification.** To the fullest extent permitted by law, Contractor shall defend (with legal counsel reasonably acceptable to City), indemnify, protect, and hold harmless City and its elected officials, officers, employees, agents, and representatives (Indemnified Parties) from and against any and all claims, losses, costs, damages, injuries (including, without limitation, injury to or death of an employee of Contractor or its subcontractors), expense, and liability of every kind, nature and description (including, without limitation, incidental and consequential damages, court costs, and litigation expenses and fees of expert consultants or expert witnesses incurred in connection therewith and costs of investigation) that arise out of, pertain to, or relate to, directly or indirectly, in whole or in part, any goods provided or performance of services under this Contract by Contractor, any subcontractor, anyone directly or indirectly employed by either of them, or anyone that either of them control. Contractor's duty to defend, indemnify, protect and hold harmless shall not include any claims or liabilities arising from the sole negligence or willful misconduct of the Indemnified Parties.

**7.2 Insurance.** Contractor shall procure and maintain for the duration of the contract insurance against claims for injuries to persons or damages to property which may arise from or

in connection with the performance of the work hereunder and the results of that work by Contractor, his agents, representatives, employees or subcontractors.

Contractor shall provide, at a minimum, the following:

**7.2.1 Commercial General Liability.** Insurance Services Office Form CG 00 01 covering CGL on an “occurrence” basis, including products and completed operations, property damage, bodily injury, and personal and advertising injury with limits no less than \$1,000,000 per occurrence. If a general aggregate limit applies, either the general aggregate limit shall apply separately to this project/location (ISO CG 25 03 or 25 04) or the general aggregate limit shall be twice the required occurrence limit.

**7.2.2 Commercial Automobile Liability.** Insurance Services Office Form Number CA 0001 covering Code 1 (any auto) or, if Contractor has no owned autos, Code 8 (hired) and 9 (non-owned), with limit no less than \$1,000,000 per accident for bodily injury and property damage.

**7.2.3 Workers' Compensation.** Insurance as required by the State of California, with Statutory Limits, and Employer’s Liability Insurance with limit of no less than \$1,000,000 per accident for bodily injury or disease.

**7.2.4 Professional Liability (Errors and Omissions).** For consultant contracts, insurance appropriate to Consultant’s profession, with limit no less than \$1,000,000 per occurrence or claim, \$2,000,000 aggregate.

If Contractor maintains broader coverage and/or higher limits than the minimums shown above, City requires and shall be entitled to the broader coverage and/or the higher limits maintained by Contractor. Any available insurance proceeds in excess of the specified minimum limits of insurance and coverage shall be available to City.

**7.2.5 Other Insurance Provisions.** The insurance policies are to contain, or be endorsed to contain, the following provisions:

**7.2.5.1 Additional Insured Status.** The City, its officers, officials, employees, and volunteers are to be covered as additional insureds on the CGL policy with respect to liability arising out of work or operations performed by or on behalf of Contractor including materials, parts, or equipment furnished in connection with such work or operations. General liability coverage can be provided in the form of an endorsement to Contractor’s insurance (at least as broad as ISO Form CG 20 10 11 85 or if not available, through the addition of both CG 20 10, CG 20 26, CG 20 33, or CG 20 38; and CG 20 37 if a later edition is used).

**7.2.5.2 Primary Coverage.** For any claims related to this contract, Contractor's insurance coverage shall be primary coverage at least as broad as ISO CG 20 01 04 13 as respects the City, its officers, officials, employees, and volunteers. Any insurance or self-insurance maintained by City, its officers, officials, employees, or volunteers shall be excess of Contractor's insurance and shall not contribute with it.

**7.2.5.3 Notice of Cancellation.** Each insurance policy required above shall provide that coverage shall not be canceled, except with notice to City.

**7.2.5.4 Waiver of Subrogation.** Contractor hereby grants to City a waiver of any right to subrogation which the Workers' Compensation insurer of said Contractor may acquire against City by virtue of the payment of any loss under such insurance. Contractor agrees to obtain any endorsement that may be necessary to affect this waiver of subrogation, but this provision applies regardless of whether or not the City has received a waiver of subrogation endorsement from the insurer.

**7.2.5.5 Claims Made Policies (applicable only to professional liability).** The Retroactive Date must be shown, and must be before the date of the contract or the beginning of contract work. Insurance must be maintained and evidence of insurance must be provided for at least five (5) years after completion of the contract of work. If coverage is canceled or non-renewed, and not replaced with another claims-made policy form with a Retroactive Date prior to the contract effective date, Contractor must purchase "extended reporting" coverage for a minimum of five (5) years after completion of work.

**7.3 Self Insured Retentions.** Self-insured retentions must be declared to and approved by City. City may require Contractor to purchase coverage with a lower retention or provide proof of ability to pay losses and related investigations, claim administration, and defense expenses within the retention. The policy language shall provide, or be endorsed to provide, that the self-insured retention may be satisfied by either the named insured or City.

**7.4 Acceptability of Insurers.** Insurance is to be placed with insurers with a current A.M. Best's rating of no less than A-VI, unless otherwise acceptable to City.

City will accept insurance provided by non-admitted, "surplus lines" carriers only if the carrier is authorized to do business in the State of California and is included on the List of Approved Surplus Lines Insurers (LASLI list). All policies of insurance carried by non-admitted carriers are subject to all of the requirements for policies of insurance provided by admitted carriers described herein.

**7.5 Verification of Coverage.** Contractor shall furnish City with original certificates and amendatory endorsements or copies of the applicable policy language effecting coverage required by this clause. All certificates and endorsements are to be received and approved by City before work commences. However, failure to obtain the required documents prior to the work beginning shall not waive Contractor's obligation to provide them. City reserves the right to require complete, certified copies of all required insurance policies, including endorsements required by these specifications, at any time.

**7.6 Special Risks or Circumstances.** City reserves the right to modify these requirements, including limits, based on the nature of the risk, prior experience, insurer, coverage, or other special circumstances.

**7.7 Additional Insurance.** Contractor may obtain additional insurance not required by this Contract.

**7.8 Excess Insurance.** All policies providing excess coverage to City shall follow the form of the primary policy or policies including but not limited to all endorsements.

**7.9 Subcontractors.** Contractor shall require and verify that all subcontractors maintain insurance meeting all the requirements stated herein, and Contractor shall ensure that City is an additional insured on insurance required from subcontractors. For CGL coverage, subcontractors shall provide coverage with a format at least as broad as the CG 20 38 04 13 endorsement.

## **ARTICLE VIII BONDS**

**8.1 Payment and Performance Bond.** Prior to the execution of this Contract, City may require Contractor to post a payment and performance bond (Bond). The Bond shall guarantee Contractor's faithful performance of this Contract and assure payment to contractors, subcontractors, and to persons furnishing goods and/or services under this Contract.

**8.1.1 Bond Amount.** The Bond shall be in a sum equal to twenty-five percent (25%) of the Contract amount, unless otherwise stated in the Specifications. City may file a claim against the Bond if Contractor fails or refuses to fulfill the terms and provisions of the Contract.

**8.1.2 Bond Term.** The Bond shall remain in full force and effect at least until complete performance of this Contract and payment of all claims for materials and labor, at which time it will convert to a ten percent (10%) warranty bond, which shall remain in place until the end of the warranty periods set forth in this Contract. The Bond shall be renewed annually, at least sixty (60) days in advance of its expiration, and Contractor shall provide timely proof of annual renewal to City.

**8.1.3 Bond Surety.** The Bond must be furnished by a company authorized by the State of California Department of Insurance to transact surety business in the State of California and which has a current A.M. Best rating of at least "A-, VIII."

**8.1.4 Non-Renewal or Cancellation.** The Bond must provide that City and Contractor shall be provided with sixty (60) days' advance written notice in the event of non-renewal, cancellation, or material change to its terms. In the event of non-renewal, cancellation, or material change to the Bond terms, Contractor shall provide City with evidence of the new source of surety within twenty-one (21) calendar days after the date of the notice of non-renewal, cancellation, or material change. Failure to maintain the Bond, as required herein, in full force

and effect as required under this Contract, will be a material breach of the Contract subject to termination of the Contract.

**8.2 Alternate Security.** City may, at its sole discretion, accept alternate security in the form of an endorsed certificate of deposit, a money order, a certified check drawn on a solvent bank, or other security acceptable to the Purchasing Agent in an amount equal to the required Bond.

## **ARTICLE IX CITY-MANDATED CLAUSES AND REQUIREMENTS**

**9.1 Contractor Certification of Compliance.** By signing this Contract, Contractor certifies that Contractor is aware of, and will comply with, these City-mandated clauses throughout the duration of the Contract.

**9.1.1 Drug-Free Workplace Certification.** Contractor shall comply with City's Drug-Free Workplace requirements set forth in Council Policy 100-17, which is incorporated into the Contract by this reference.

**9.1.2 Contractor Certification for Americans with Disabilities Act (ADA) and State Access Laws and Regulations:** Contractor shall comply with all accessibility requirements under the ADA and under Title 24 of the California Code of Regulations (Title 24). When a conflict exists between the ADA and Title 24, Contractor shall comply with the most restrictive requirement (i.e., that which provides the most access). Contractor also shall comply with the City's ADA Compliance/City Contractors requirements as set forth in Council Policy 100-04, which is incorporated into this Contract by reference. Contractor warrants and certifies compliance with all federal and state access laws and regulations and further certifies that any subcontract agreement for this contract contains language which indicates the subcontractor's agreement to abide by the provisions of the City's Council Policy and any applicable access laws and regulations.

### **9.1.3 Non-Discrimination Requirements.**

**9.1.3.1 Compliance with City's Equal Opportunity Contracting Program (EOCP).** Contractor shall comply with City's EOCP Requirements. Contractor shall not discriminate against any employee or applicant for employment on any basis prohibited by law. Contractor shall provide equal opportunity in all employment practices. Prime Contractors shall ensure that their subcontractors comply with this program. Nothing in this Section shall be interpreted to hold a Prime Contractor liable for any discriminatory practice of its subcontractors.

**9.1.3.2 Non-Discrimination Ordinance.** Contractor shall not discriminate on the basis of race, gender, gender expression, gender identity, religion, national origin, ethnicity, sexual orientation, age, or disability in the solicitation, selection, hiring or treatment of subcontractors, vendors or suppliers. Contractor shall provide equal opportunity for subcontractors to participate in subcontracting opportunities. Contractor understands and agrees that violation of this clause shall be considered a material breach of the Contract and may result

in Contract termination, debarment, or other sanctions. Contractor shall ensure that this language is included in contracts between Contractor and any subcontractors, vendors and suppliers.

**9.1.3.3 Compliance Investigations.** Upon City's request, Contractor agrees to provide to City, within sixty calendar days, a truthful and complete list of the names of all subcontractors, vendors, and suppliers that Contractor has used in the past five years on any of its contracts that were undertaken within San Diego County, including the total dollar amount paid by Contractor for each subcontract or supply contract. Contractor further agrees to fully cooperate in any investigation conducted by City pursuant to City's Nondiscrimination in Contracting Ordinance. Contractor understands and agrees that violation of this clause shall be considered a material breach of the Contract and may result in Contract termination, debarment, and other sanctions.

**9.1.4 Equal Benefits Ordinance Certification.** Unless an exception applies, Contractor shall comply with the Equal Benefits Ordinance (EBO) codified in the San Diego Municipal Code (SDMC). Failure to maintain equal benefits is a material breach of the Contract.

**9.1.5 Contractor Standards.** Contractor shall comply with Contractor Standards provisions codified in the SDMC. Contractor understands and agrees that violation of Contractor Standards may be considered a material breach of the Contract and may result in Contract termination, debarment, and other sanctions.

**9.1.6 Noise Abatement.** Contractor shall operate, conduct, or construct without violating the City's Noise Abatement Ordinance codified in the SDMC.

**9.1.7 Storm Water Pollution Prevention Program.** Contractor shall comply with the City's Storm Water Management and Discharge Control provisions codified in Division 3 of Chapter 4 of the SDMC, as may be amended, and any and all applicable Best Management Practice guidelines and pollution elimination requirements in performing or delivering services at City owned, leased, or managed property, or in performance of services and activities on behalf of City regardless of location.

Contractor shall comply with the City's Jurisdictional Urban Runoff Management Plan encompassing Citywide programs and activities designed to prevent and reduce storm water pollution within City boundaries as adopted by the City Council on January 22, 2008, via Resolution No. 303351, as may be amended.

Contractor shall comply with each City facility or work site's Storm Water Pollution Prevention Plan, as applicable, and institute all controls needed while completing the services to minimize any negative impact to the storm water collection system and environment.

**9.1.8 Service Worker Retention Ordinance.** If applicable, Contractor shall comply with the Service Worker Retention Ordinance (SWRO) codified in the SDMC.

**9.1.9 Product Endorsement.** Contractor shall comply with Council Policy 000-41 which requires that other than listing the City as a client and other limited endorsements, any advertisements, social media, promotions or other marketing referring to the City as a user of a product or service will require prior written approval of the Mayor or designee. Use of the City Seal or City logos is prohibited.

**9.1.10 Business Tax Certificate.** Unless the City Treasurer determines in writing that a contractor is exempt from the payment of business tax, any contractor doing business with the City of San Diego is required to obtain a Business Tax Certificate (BTC) and to provide a copy of its BTC to the City before a Contract is executed.

**9.1.11 Equal Pay Ordinance.** Unless an exception applies, Contractor shall comply with the Equal Pay Ordinance codified in San Diego Municipal Code sections 22.4801 through 22.4809. Contractor shall certify in writing that it will comply with the requirements of the EPO.

**9.1.11.1 Contractor and Subcontract Requirement.** The Equal Pay Ordinance applies to any subcontractor who performs work on behalf of a Contractor to the same extent as it would apply to that Contractor. Any Contractor subject to the Equal Pay Ordinance shall require all of its subcontractors to certify compliance with the Equal Pay Ordinance in its written subcontracts.

## **ARTICLE X CONFLICT OF INTEREST AND VIOLATIONS OF LAW**

**10.1 Conflict of Interest Laws.** Contractor is subject to all federal, state and local conflict of interest laws, regulations, and policies applicable to public contracts and procurement practices including, but not limited to, California Government Code sections 1090, *et. seq.* and 81000, *et. seq.*, and the Ethics Ordinance, codified in the SDMC. City may determine that Contractor must complete one or more statements of economic interest disclosing relevant financial interests. Upon City's request, Contractor shall submit the necessary documents to City.

**10.2 Contractor's Responsibility for Employees and Agents.** Contractor is required to establish and make known to its employees and agents appropriate safeguards to prohibit employees from using their positions for a purpose that is, or that gives the appearance of being, motivated by the desire for private gain for themselves or others, particularly those with whom they have family, business or other relationships.

**10.3 Contractor's Financial or Organizational Interests.** In connection with any task, Contractor shall not recommend or specify any product, supplier, or contractor with whom Contractor has a direct or indirect financial or organizational interest or relationship that would violate conflict of interest laws, regulations, or policies.

**10.4 Certification of Non-Collusion.** Contractor certifies that: (1) Contractor's bid or proposal was not made in the interest of or on behalf of any person, firm, or corporation not identified; (2) Contractor did not directly or indirectly induce or solicit any other bidder or proposer to put in a sham bid or proposal; (3) Contractor did not directly or indirectly induce or

solicit any other person, firm or corporation to refrain from bidding; and (4) Contractor did not seek by collusion to secure any advantage over the other bidders or proposers.

**10.5 Hiring City Employees.** This Contract shall be unilaterally and immediately terminated by City if Contractor employs an individual who within the twelve (12) months immediately preceding such employment did in his/her capacity as a City officer or employee participate in negotiations with or otherwise have an influence on the selection of Contractor.

## **ARTICLE XI DISPUTE RESOLUTION**

**11.1 Mediation.** If a dispute arises out of or relates to this Contract and cannot be settled through normal contract negotiations, Contractor and City shall use mandatory non-binding mediation before having recourse in a court of law.

**11.2 Selection of Mediator.** A single mediator that is acceptable to both parties shall be used to mediate the dispute. The mediator will be knowledgeable in the subject matter of this Contract, if possible.

**11.3 Expenses.** The expenses of witnesses for either side shall be paid by the party producing such witnesses. All other expenses of the mediation, including required traveling and other expenses of the mediator, and the cost of any proofs or expert advice produced at the direct request of the mediator, shall be borne equally by the parties, unless they agree otherwise.

**11.4 Conduct of Mediation Sessions.** Mediation hearings will be conducted in an informal manner and discovery will not be allowed. The discussions, statements, writings and admissions will be confidential to the proceedings (pursuant to California Evidence Code sections 1115 through 1128) and will not be used for any other purpose unless otherwise agreed by the parties in writing. The parties may agree to exchange any information they deem necessary. Both parties shall have a representative attend the mediation who is authorized to settle the dispute, though City's recommendation of settlement may be subject to the approval of the Mayor and City Council. Either party may have attorneys, witnesses or experts present.

**11.5 Mediation Results.** Any agreements resulting from mediation shall be memorialized in writing. The results of the mediation shall not be final or binding unless otherwise agreed to in writing by the parties. Mediators shall not be subject to any subpoena or liability, and their actions shall not be subject to discovery.

## **ARTICLE XII MANDATORY ASSISTANCE**

**12.1 Mandatory Assistance.** If a third party dispute or litigation, or both, arises out of, or relates in any way to the services provided to the City under a Contract, Contractor, its agents, officers, and employees agree to assist in resolving the dispute or litigation upon City's request. Contractor's assistance includes, but is not limited to, providing professional consultations,

attending mediations, arbitrations, depositions, trials or any event related to the dispute resolution and/or litigation.

**12.2 Compensation for Mandatory Assistance.** City will compensate Contractor for fees incurred for providing Mandatory Assistance. If, however, the fees incurred for the Mandatory Assistance are determined, through resolution of the third party dispute or litigation, or both, to be attributable in whole, or in part, to the acts or omissions of Contractor, its agents, officers, and employees, Contractor shall reimburse City for all fees paid to Contractor, its agents, officers, and employees for Mandatory Assistance.

**12.3 Attorneys' Fees Related to Mandatory Assistance.** In providing City with dispute or litigation assistance, Contractor or its agents, officers, and employees may incur expenses and/or costs. Contractor agrees that any attorney fees it may incur as a result of assistance provided under Section 12.2 are not reimbursable.

### **ARTICLE XIII MISCELLANEOUS**

**13.1 Headings.** All headings are for convenience only and shall not affect the interpretation of this Contract.

**13.2 Non-Assignment.** Contractor may not assign the obligations under this Contract, whether by express assignment or by sale of the company, nor any monies due or to become due under this Contract, without City's prior written approval. Any assignment in violation of this paragraph shall constitute a default and is grounds for termination of this Contract at the City's sole discretion. In no event shall any putative assignment create a contractual relationship between City and any putative assignee.

**13.3 Independent Contractors.** Contractor and any subcontractors employed by Contractor are independent contractors and not agents of City. Any provisions of this Contract that may appear to give City any right to direct Contractor concerning the details of performing or providing the goods and/or services, or to exercise any control over performance of the Contract, shall mean only that Contractor shall follow the direction of City concerning the end results of the performance.

**13.4 Subcontractors.** All persons assigned to perform any work related to this Contract, including any subcontractors, are deemed to be employees of Contractor, and Contractor shall be directly responsible for their work.

**13.5 Covenants and Conditions.** All provisions of this Contract expressed as either covenants or conditions on the part of City or Contractor shall be deemed to be both covenants and conditions.

**13.6 Compliance with Controlling Law.** Contractor shall comply with all applicable local, state, and federal laws, regulations, and policies. Contractor's act or omission in violation of applicable local, state, and federal laws, regulations, and policies is grounds for contract

termination. In addition to all other remedies or damages allowed by law, Contractor is liable to City for all damages, including costs for substitute performance, sustained as a result of the violation. In addition, Contractor may be subject to suspension, debarment, or both.

**13.7 Governing Law.** The Contract shall be deemed to be made under, construed in accordance with, and governed by the laws of the State of California without regard to the conflicts or choice of law provisions thereof.

**13.8 Venue.** The venue for any suit concerning solicitations or the Contract, the interpretation of application of any of its terms and conditions, or any related disputes shall be in the County of San Diego, State of California.

**13.9 Successors in Interest.** This Contract and all rights and obligations created by this Contract shall be in force and effect whether or not any parties to the Contract have been succeeded by another entity, and all rights and obligations created by this Contract shall be vested and binding on any party's successor in interest.

**13.10 No Waiver.** No failure of either City or Contractor to insist upon the strict performance by the other of any covenant, term or condition of this Contract, nor any failure to exercise any right or remedy consequent upon a breach of any covenant, term, or condition of this Contract, shall constitute a waiver of any such breach of such covenant, term or condition. No waiver of any breach shall affect or alter this Contract, and each and every covenant, condition, and term hereof shall continue in full force and effect without respect to any existing or subsequent breach.

**13.11 Severability.** The unenforceability, invalidity, or illegality of any provision of this Contract shall not render any other provision of this Contract unenforceable, invalid, or illegal.

**13.12 Drafting Ambiguities.** The parties acknowledge that they have the right to be advised by legal counsel with respect to the negotiations, terms and conditions of this Contract, and the decision of whether to seek advice of legal counsel with respect to this Contract is the sole responsibility of each party. This Contract shall not be construed in favor of or against either party by reason of the extent to which each party participated in the drafting of the Contract.

**13.13 Amendments.** Neither this Contract nor any provision hereof may be changed, modified, amended or waived except by a written agreement executed by duly authorized representatives of City and Contractor. Any alleged oral amendments have no force or effect. The Purchasing Agent must sign all Contract amendments.

**13.14 Conflicts Between Terms.** If this Contract conflicts with an applicable local, state, or federal law, regulation, or court order, applicable local, state, or federal law, regulation, or court order shall control. Varying degrees of stringency among the main body of this Contract, the exhibits or attachments, and laws, regulations, or orders are not deemed conflicts, and the most stringent requirement shall control. Each party shall notify the other immediately upon the identification of any apparent conflict or inconsistency concerning this Contract.

**13.15 Survival of Obligations.** All representations, indemnifications, warranties, and guarantees made in, required by, or given in accordance with this Contract, as well as all continuing obligations indicated in this Contract, shall survive, completion and acceptance of performance and termination, expiration or completion of the Contract.

**13.16 Confidentiality of Services.** All services performed by Contractor, and any sub-contractor(s) if applicable, including but not limited to all drafts, data, information, correspondence, proposals, reports of any nature, estimates compiled or composed by Contractor, are for the sole use of City, its agents, and employees. Neither the documents nor their contents shall be released by Contractor or any subcontractor to any third party without the prior written consent of City. This provision does not apply to information that: (1) was publicly known, or otherwise known to Contractor, at the time it was disclosed to Contractor by City; (2) subsequently becomes publicly known through no act or omission of Contractor; or (3) otherwise becomes known to Contractor other than through disclosure by City.

**13.17 Insolvency.** If Contractor enters into proceedings relating to bankruptcy, whether voluntary or involuntary, Contractor agrees to furnish, by certified mail or electronic commerce method authorized by the Contract, written notification of the bankruptcy to the Purchasing Agent and the Contract Administrator responsible for administering the Contract. This notification shall be furnished within five (5) days of the initiation of the proceedings relating to bankruptcy filing. This notification shall include the date on which the bankruptcy petition was filed, the identity of the court in which the bankruptcy petition was filed, and a listing of City contract numbers and contracting offices for all City contracts against which final payment has not been made. This obligation remains in effect until final payment is made under this Contract.

**13.18 No Third Party Beneficiaries.** Except as may be specifically set forth in this Contract, none of the provisions of this Contract are intended to benefit any third party not specifically referenced herein. No party other than City and Contractor shall have the right to enforce any of the provisions of this Contract.

**13.19 Actions of City in its Governmental Capacity.** Nothing in this Contract shall be interpreted as limiting the rights and obligations of City in its governmental or regulatory capacity.

## EXHIBIT D

### WAGE REQUIREMENTS: SERVICE AND MAINTENANCE CONTRACTS EXECUTED ON OR AFTER JANUARY 1, 2015

By signing this Contract, Bidder certifies that he or she is aware of the wage provisions described herein and shall comply with such provisions before commencing services.

**A. PREVAILING WAGES.** Pursuant to San Diego Municipal Code section 22.3019, construction, alteration, demolition, repair and maintenance work performed under this Contract is subject to State prevailing wage laws. For construction work performed under this Contract cumulatively exceeding \$25,000 and for alteration, demolition, repair and maintenance work performed under this Contract cumulatively exceeding \$15,000, Bidder and its subcontractors shall comply with State prevailing wage laws including, but not limited to, the requirements listed below. This requirement is in addition to the requirement to pay Living Wage pursuant to San Diego Municipal Code Chapter 2, Article 2, Division 42. Bidder must determine which per diem rate is highest for each classification of work (i.e. Prevailing Wage Rate or Living Wage Rate), and pay the highest of the two rates to their employees. Living Wage applies to workers who are not subject to Prevailing Wage Rates.

**1. Compliance with Prevailing Wage Requirements.** Pursuant to sections 1720 through 1861 of the California Labor Code, Bidder and its subcontractors shall ensure that all workers who perform work under this Contract are paid not less than the prevailing rate of per diem wages as determined by the Director of the California Department of Industrial Relations (DIR). This includes work performed during the design and preconstruction phases of construction including, but not limited to, inspection and land surveying work.

**1.1.** Copies of such prevailing rate of per diem wages are on file at the City of San Diego's Equal Opportunity Contracting Department and are available for inspection to any interested party on request. Copies of the prevailing rate of per diem wages also may be found at <http://www.dir.ca.gov/OPRL/DPreWageDetermination.htm>. Bidder and its subcontractors shall post a copy of the prevailing rate of per diem wages determination at each job site and shall make them available to any interested party upon request.

**1.2.** The wage rates determined by the DIR refer to expiration dates. If the published wage rate does not refer to a predetermined wage rate to be paid after the expiration date, then the published rate of wage shall be in effect for the life of this Contract. If the published wage rate refers to a predetermined wage rate to become effective upon expiration of the published wage rate and the predetermined wage rate is on file with the DIR, such predetermined wage rate shall become effective on the date following the expiration date and shall apply to this Contract in the same manner as if it had been published in said publication. If the predetermined wage rate refers to one or more additional expiration dates with additional predetermined wage rates, which expiration dates occur during the life of this Contract, each successive predetermined wage rate shall apply to this Contract on the date following the expiration date

of the previous wage rate. If the last of such predetermined wage rates expires during the life of this Contract, such wage rate shall apply to the balance of the Contract.

**2. Penalties for Violations.** Bidder and its subcontractors shall comply with California Labor Code section 1775 in the event a worker is paid less than the prevailing wage rate for the work or craft in which the worker is employed. This shall be in addition to any other applicable penalties allowed under Labor Code sections 1720 – 1861.

**3. Payroll Records.** Bidder and its subcontractors shall comply with California Labor Code section 1776, which generally requires keeping accurate payroll records, verifying and certifying payroll records, and making them available for inspection. Bidder shall require its subcontractors to also comply with section 1776. Bidder and its subcontractors shall submit weekly certified payroll records online via the City's web-based Labor Compliance Program. Bidder is responsible for ensuring its subcontractors submit certified payroll records to the City. Bidder and its subcontractors shall also furnish the records specified in Labor Code section 1776 directly to the Labor Commissioner in the manner required in Labor Code section 1771.4.

**4. Apprentices.** Bidder and its subcontractors shall comply with California Labor Code sections 1777.5, 1777.6 and 1777.7 concerning the employment and wages of apprentices. Bidder shall be held responsible for their compliance as well as the compliance of their subcontractors with sections 1777.5, 1777.6 and 1777.7.

**5. Working Hours.** Bidder and its subcontractors shall comply with California Labor Code sections 1810 through 1815, including but not limited to: (i) restrict working hours on public works contracts to eight hours a day and forty hours a week, unless all hours worked in excess of 8 hours per day are compensated at not less than 1½ times the basic rate of pay; and (ii) specify penalties to be imposed on design professionals and subcontractors of \$25 per worker per day for each day the worker works more than 8 hours per day and 40 hours per week in violation of California Labor Code sections 1810 through 1815.

**6. Required Provisions for Subcontracts.** Bidder shall include at a minimum a copy of the following provisions in any contract they enter into with a subcontractor: California Labor Code sections 1771, 1771.1, 1775, 1776, 1777.5, 1810, 1813, 1815, 1860 and 1861.

**7. Labor Code Section 1861 Certification.** Bidder in accordance with California Labor Code section 3700 is required to secure the payment of compensation of its employees and by signing this Contract, Bidder certifies that "I am aware of the provisions of Section 3700 of the California Labor Code which require every employer to be insured against liability for workers' compensation or to undertake self-insurance in accordance with the provisions of that code, and I will comply with such provisions before commencing the performance of the work of this Contract."

**8. Labor Compliance Program.** The City has its own Labor Compliance Program authorized in August 2011 by the DIR. The City will withhold contract payments when

payroll records are delinquent or deemed inadequate by the City or other governmental entity, or it has been established after an investigation by the City or other governmental entity that underpayment(s) have occurred. For questions or assistance, please contact the City of San Diego's Equal Opportunity Contracting Department at 619-236-6000.

**9. Contractor and Subcontractor Registration Requirements.** This project is subject to compliance monitoring and enforcement by the DIR. A Bidder or subcontractor shall not be qualified to bid on, be listed in a bid proposal, subject to the requirements of Section 4104 of the Public Contract Code, or enter into any contract for public work, as defined in this chapter of the Labor Code unless currently registered and qualified to perform the work pursuant to Section 1725.5. In accordance with Labor Code section 1771.1(a), “[i]t is not a violation of this section for an unregistered contractor to submit a bid that is authorized by Section 7029.1 of the Business and Professions Code or by Section 10164 or 20103.5 of the Public Contract Code, provided the contractor is registered to perform public work pursuant to Section 1725.5 at the time the contract is awarded.”

**9.1.** A Bidder's inadvertent error in listing a subcontractor who is not registered pursuant to Labor Code section 1725.5 in a response to a solicitation shall not be grounds for filing a bid protest or grounds for considering the bid non-responsive provided that any of the following apply: (1) the subcontractor is registered prior to bid opening; (2) within twenty-four hours after the bid opening, the subcontractor is registered and has paid the penalty registration fee specified in Labor Code section 1725.5; or (3) the subcontractor is replaced by another registered contractor pursuant to Public Contract Code section 4107.

**9.2.** A Contract entered into with any Bidder or subcontractor in violation of Labor Code section 1771.1(a) shall be subject to cancellation, provided that a Contract for public work shall not be unlawful, void, or voidable solely due to the failure of the awarding body, Bidder, or any subcontractor to comply with the requirements of section 1725.5 of this section.

**9.3.** By submitting a bid or proposal to the City, Bidder is certifying that he or she has verified that all subcontractors used on this public works project are registered with the DIR in compliance with Labor Code sections 1771.1 and 1725.5, and Bidder shall provide proof of registration for themselves and all listed subcontractors to the City at the time of bid or proposal due date or upon request.

**10. Stop Order.** For Bidder or its subcontractor(s) engaging in the performance of any public work contract without having been registered in violation of Labor Code sections 1725.5 or 1771.1, the Labor Commissioner shall issue and serve a stop order prohibiting the use of the unregistered Bidder or unregistered subcontractor(s) on ALL public works until the unregistered Bidder or unregistered subcontractor(s) is registered. Failure to observe a stop order is a misdemeanor.

**11. List of all Subcontractors.** The City may ask Bidder for the most current list of subcontractors (regardless of tier), along with their DIR registration numbers,

utilized on this contract at any time during performance of this contract, and Bidder shall provide the list within ten (10) working days of the City's request. Additionally, Bidder shall provide the City with a complete list of all subcontractors utilized on this contract (regardless of tier), within ten working days of the completion of the contract, along with their DIR registration numbers. The City shall withhold final payment to Bidder until at least 30 days after this information is provided to the City.

**12. Exemptions for Small Projects.** There are limited exemptions for installation, alteration, demolition, or repair work done on projects of \$25,000 or less. The Bidder shall still comply with Labor Code sections 1720 et. seq. The only recognized exemptions are listed below:

**12.1. Registration.** The Bidder will not be required to register with the DIR for small projects. (Labor Code section 1771.1).

**12.2. Certified Payroll Records.** The records required in Labor Code section 1776 shall be required to be kept and submitted to the City of San Diego, but will not be required to be submitted online with the DIR directly. The Bidder will need to keep those records for at least three years following the completion of the contract. (Labor Code section 1771.4).

**12.3. List of all Subcontractors.** The Bidder shall not be required to hire only registered subcontractors and is exempt from submitting the list of all subcontractors that is required in section 11 above. (Labor Code section 1773.3).

**B. Living Wages.** This Contract is subject to the City's Living Wage Ordinance (LWO), codified in San Diego Municipal Code Chapter 2, Article 2, Division 42. Bidder agrees to require all of its subcontractors, sublessees, and concessionaires subject to the LWO to comply with the LWO and all applicable regulations and rules.

**1. Payment of Living Wages.** Pursuant to San Diego Municipal Code section 22.4220(a), Bidder and its subcontractors shall ensure that all workers who perform work under this Contract are paid not less than the required minimum hourly wage rates and health benefits rate unless an exemption applies.

**1.1** Copies of such living wage rates are available on the City website at <https://www.sandiego.gov/purchasing/programs/livingwage/>. Bidder and its subcontractors shall post a notice informing workers of their rights at each job site or a site frequently accessed by covered employees in a prominent and accessible place in accordance with San Diego Municipal Code section 22.4225(e).

**1.2** LWO wage and health benefit rates are adjusted annually in accordance with San Diego Municipal Code section 22.4220(b) to reflect the Consumer Price Index. Service contracts, financial assistance agreements, and City facilities agreements must include this upward adjustment of wage rates to covered employees on July 1 of each year.

**2. Compensated Leave.** Pursuant to San Diego Municipal Code section 22.4220(c), Bidder and its subcontractors shall provide a minimum of eighty (80)

hours per year of compensated leave. Part-time employees must accrue compensated leave at a rate proportional to full-time employees.

**3. Uncompensated Leave.** Bidder and its subcontractors must also permit workers to take a minimum of eighty (80) hours of uncompensated leave per year to be used for the illness of the worker or a member of his or her immediate family when the worker has exhausted all accrued compensated leave.

**4. Enforcement and Remedies.** City will take any one or more of the actions listed in San Diego Municipal Code section 22.4230 should Bidder or its subcontractors are found to be in violation of any of the provisions of the LWO.

**5. Payroll Records.** Bidder and its subcontractors shall submit weekly certified payroll records online via the City's web-based Labor Compliance Program. Bidder is responsible for ensuring its subcontractors submit certified payroll records to the City.

**5.1** For contracts subject to both living wage and prevailing wage requirements, only one submittal will be required. Submittals by a Bidder and all subcontractors must comply with both ordinance requirements.

**6. Certification of Compliance.** San Diego Municipal Code section 22.4225 requires each Bidder to fill out and file a living wage certification with the Living Wage Program Manager within thirty (30) days of Award of the Contract.

**7. Annual Compliance Report.** Bidder and its subcontractors must file an annual report documenting compliance with the LWO pursuant to San Diego Municipal Code section 22.4225(d). Records documenting compliance must be maintained for a minimum of three (3) years after the City's final payment on the service contract or agreement.

**8. Exemption from Living Wage Ordinance.** Pursuant to San Diego Municipal Code section 22.4215, this Contract may be exempt from the LWO. For a determination on this exemption, Bidder must complete the Living Wage Ordinance Application for Exemption.

**C. Highest Wage Rate Applies.** Bidder is required to pay the highest applicable wage rate where more than one wage rate applies.